



OFFICE *of* GOVERNMENT INFORMATION SERVICES

August 13, 2015 — Sent via email

[REDACTED]

Re: Case No.: 201500882
NG: CM: AB

NATIONAL
ARCHIVES
and RECORDS
ADMINISTRATION

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Dear [REDACTED]:

This responds to your June 15, 2015 request for assistance regarding your Freedom of Information Act (FOIA) request to the U.S. Marshals Service (USMS).

Congress created OGIS to complement existing FOIA practice and procedure; we strive to work in conjunction with the existing request and appeal process. The goal is for OGIS to allow, whenever practical, the requester to exhaust his or her remedies within the agency, including the appeal process. OGIS has no investigatory or enforcement power, nor can we compel an agency to release records. OGIS serves as the Federal FOIA Ombudsman and our jurisdiction is limited to assisting with the FOIA process.

You made a request to USMS for information regarding the selection process for a particular position. USMS located five pages responsive to your request in its Human Resources Division. All five pages were partially released to you; portions of the records were withheld under exemptions protecting personal privacy (Exemption (b)(6)) and pre-decisional information (Exemption (b)(5)). You appealed USMS' use of Exemption (b)(5) to the Department Of Justice's Office of Information Policy, which upheld the agency's initial determination.

We spoke about your request with USMS and learned that the agency is firm in its position to withhold information in the Merit Promotion Recommendation Worksheet (Form USM-577) and Career Board Notes. In cases like this where the agency is firm in its decision, there is little OGIS can do aside from further explaining the cited exemption.

Exemption (b)(5)citation, is intended to protect information that includes the agency's decision-making process. According to the agency, and as you note in your appeal to OIP, Form USM-577 and the Career Board Notes are a part of the Career Board process. The information included on Form USM-577 and the Career Board Notes may or may not have influenced the agency's final decision.



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For the deliberative process privilege to apply, the withheld information must be predecisional and deliberative. Documents recommending a course of action are traditionally predecisional and a communication is deliberative if it reflects the agency's decision-making process. That is not to say, however, that factual information contained within a deliberative document must always be released. When the facts themselves reflect the agency's deliberative process, courts have held that they may be considered deliberative.

While I understand that this is not the outcome you wanted, I hope you find this information useful. At this time, there is no further assistance OGIS can offer. Thank you for bringing this matter to OGIS. We will close your request for assistance.

Sincerely,

/S/

James Holzer, Director
Office of Government Information Services (OGIS)

cc: Leila Wassom, FOIA/PA Specialist, USMS

We appreciate your feedback. Please visit <https://www.surveymonkey.com/s/OGIS> to take a brief anonymous survey on the service you received from OGIS.